

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 6430

Joint Petition of Vermont Public Power Supply Authority)
and the Villages of Hyde Park, Jacksonville, Lyndonville,)
Northfield, Orleans, Swanton and Enosburg Falls Electric)
Departments for Approval of an All Requirements)
Contract)

Hearings at
Montpelier, Vermont
October 10, 2000
May 1, 2001

Order entered: 6/1/2001

PRESENT: Ennis John Gidney, Hearing Officer

APPEARANCES: David John Mullett, Esq.
for Vermont Public Power Supply Authority

William B. Piper Esq.
Primmer & Piper, PC
for the Municipal Electric Departments

Sarah Hofmann, Esq.
for Vermont Department of Public Service

I. INTRODUCTION

The petitioners, Vermont Public Power Supply Authority ("VPPSA") and certain municipal electric departments ("Municipalities"),¹ filed a Joint Petition with the Vermont Public Service Board ("Board") on July 18, 2000, seeking approval of an all-requirements contract

1. The original municipal electric departments petitioning were the Village of Hyde Park Electric Department, Village of Jacksonville Electric Department, Village of Lyndonville Electric Department, Village of Northfield Electric Department, Village of Orleans Electric Department and Swanton Village, Inc. Electric Department. The Village of Enosburg Falls Electric Department was added as a petitioner by Amendment dated August 18, 2000, and the Barton Village, Inc. Electric Department and the Town of Readsboro Electric Department were added by Amendment dated October 17, 2001.

("ARC") between VPPSA and the named municipal electric departments pursuant to 30 V.S.A. §§ 4002(6), 4002a, and 5012(15). At the time of filing the petition, the petitioners requested that the Board open a docket and conduct an investigation. The Vermont Department of Public Service ("DPS") also requested such an investigation. On October 10, 2000, a prehearing conference was held and a preliminary schedule determined.

Due to the increased complexities and changes taking place in the wholesale power market, it is becoming difficult for individual municipal utilities to make cost effective, timely wholesale power purchase decisions. As the Vermont Legislature and regulators recognized in enacting § 4002a authorizing the all-requirements contract, pooling together the load requirements of the municipals may lead to efficiencies and perhaps some power cost savings.

The parties agree that an ARC will allow VPPSA, acting for the petitioner electric departments, to respond to market conditions in a timely fashion. The ARC would relieve the participating municipal electric departments from certain day to day power market monitoring responsibilities in which they have limited expertise, while continuing to provide the participants with the opportunity and responsibility to exercise sufficient oversight to fulfill their responsibilities.

After agreeing upon the benefits an ARC could provide, the parties spent a substantial amount of time reviewing and revising the Power Supply Assumption, Mitigation and Supply Agreement ("PAMSA"),² the operative document for the ARC. After lengthy discussions and negotiations, the petitioners and the DPS were able to resolve all but three of their disagreements on the contents of the PAMSA prior to the technical hearing.

Those three areas of disagreement were:

- There is not a protocol that sets out how actions are conveyed or how the municipals are to indicate disagreement and in what time frame, yet, under the ARC, silence by the municipal participants is considered consent when VPPSA takes actions;
- The procedures for termination of the ARC; and

2. The latest draft of the PAMSA is in the record as Exhibit VPPSA 1.

- The calculation of the Energy Charge Rate in paragraph 8 of the ARC (exhibit VPPSA-1).

Subsequent to the conclusion of the hearings, the parties were able to resolve the contested issue relating to the absence of a protocol that sets out how actions are conveyed, how the municipals are to indicate disagreement, and the time frame within which the municipals must act. The parties now have agreed that the petitioners will³ draw up a protocol and file it as a compliance filing prior to seeking the voter approval of the ARC.

The petitioners and the DPS have stipulated to the findings and order contained herein, subject to the rights of each party to seek its proposed resolution of the two contested issues remaining in this docket. Those issues have been briefed separately by the parties.

Pursuant to 30 V.S.A. § 8, and based on the record and evidence before me, I present the following findings of fact and conclusions of law to the Board.

II. FINDINGS

1. VPPSA is a body politic and corporate possessing duties and powers as set forth in Title 30 of the Vermont Statutes. 30 V.S.A. 5011(a). VPPSA is a company under 30 V.S.A. § 201, to the extent not inconsistent with the specific VPPSA statutes. Laws of Vermont, 1991 (Adj. Sess.) No. 170, at § 5.

2. Each of the petitioning Municipalities in this docket is a municipal electric utility duly operating pursuant to Vermont law, and providing electric service to retail customers. Petition at par. 2.

3. Each of the Municipalities is a VPPSA member. *Id.* at par. 3.

4. Historically, the Municipalities have been responsible for procuring electricity to meet the needs of their customers. *Id.* at par. 4.

5. The responsibilities connected with procuring electric power and transmission have become vastly more complex over the past several years. Among the significant events which have increased this complexity are Federal Energy Regulatory Commission Order 888 and subsequent orders, the establishment of the New England Independent System Operator ("ISO-

3. See Comments on Proposal for Decision, below.

New England"), and the lack of long-term power contracts presently available. Evans-Mongeon 8/21/01 pf. at 2-3.

6. VPPSA has over twenty years of experience in assisting its members with power procurement and transmission issues. As the market has become more complex, VPPSA has taken a more active role, which has included the establishment of a central dispatch system in 1997. Petition at par. 4.

7. The VPPSA member systems voluntarily terminated their NEPOOL membership in favor of VPPSA effective October 1, 1999, in recognition of the increasing complexity of the power market and the ability of VPPSA to more effectively meet the Municipalities' needs in this area. *Id.* at par. 3.

8. Through statutory changes adopted in 1991, the Vermont Legislature specifically conferred on VPPSA and the Municipalities the authority to enter into an ARC like that proposed in this docket, subject to specific approval requirements as discussed below. 30 V.S.A. §§ 4002(6), 4002a, 5012(15).

9. An ARC arrangement must be initially approved by the Board. Upon either approval by the Board or failure of the Board to act within a seven-month deadline imposed by statute, the ARC must also then be approved by the majority of municipal voters, in a vote held within 90 days of the Board's approval or failure to act. 30 V.S.A. § 4002a(b)(1) and (2).

10. The statutes also require that an ARC contain a right to exit upon petition signed by five percent of municipal voters and a subsequent voter decision to terminate participation in the ARC.⁴ 30 V.S.A. § 4002a(d).

11. The proposed ARC in this docket embodies both a fixed term limit and the above-described right of exit. ARC at pars. 1 (twenty-year term), 21 (exit right in accordance with statutory language regarding a vote).

12. The proposed ARC, titled a "Power Assumption, Mitigation and Supply Agreement," resulted from many months of discussion and drafting between VPPSA, the Municipalities and the DPS. The version of the document offered into evidence at the hearing reflects the agreed upon

4. The petitioners and the DPS disagree as to whether the municipal system managers should also have the right to terminate a system's ARC participation without municipal vote.

changes, which are summarized in an exhibit offered at the hearing. Evans-Mongeon 8/21/00 pf. at 2; exhs. VPPSA 1 and 2; tr. 5/1/01 at 69-70.

13. The trustees of each Municipality have voted to enter into the ARC, subject to approvals of this Board and the municipal voters in accordance with statutory requirements. *Id.*; exh. Municipal Petitioner A.

14. Under the ARC, the VPPSA Board of Directors will hold responsibility for power supply decisions. A representative of each Municipality sits on the VPPSA Board, and has full and fair authority to influence and participate in decisions of the VPPSA Board. Evans-Mongeon 8/21/00 pf. at 4. However, an individual Municipality may direct the purchase of a new supply source for its own use, that would not otherwise have been obtained by VPPSA for the ARC participants, and the Municipal will be assigned all costs and benefits of such a new source. Exh. VPPSA 1 at par. 4.

15. The ARC will result in each Municipality retaining economic responsibility for its prior power supply decisions, and a sharing of costs with respect to future power supply acquisition. Evans-Mongeon 8/21/00 pf. at 6-7; Underhill 8/21/00 pf. at 8.

16. VPPSA does not foresee that implementation of the ARC will require the addition of staff or the incurring of any significant additional expenses. Evans-Mongeon 8/21/00 pf. at 7.⁵

17. The ARC specifically requires that VPPSA use its best efforts, consistent with prudent utility practice, to maximize positive value and minimize negative value of power supply sources. Should a Municipality wish to restrict VPPSA in any such effort, it must indicate that restriction in writing signed by a duly authorized agent of the Municipality. Exh. VPPSA 1 at par. 4.

18. Implicit in the All Requirements Contract is the necessity that the Municipalities transfer their existing power supply and transmission resources to VPPSA, and such transfers would occur forthwith upon the requisite approvals of the ARC. The parties have indicated the specific sources for each Municipality's system, and the nature of the manner in which the source will be transferred

5. The parties disagree about which methodology should be used to calculate the Energy Charge Rate. VPPSA estimates that there will be an additional cost of eight man-hours per month if the methodology proposed by the DPS is used. Tr. 5/1/01 at 41.

to VPPSA. The bulk of these transfers will be by assignment, either of contractual rights or of generating station output. Exh. VPPSA 1 at par. 2.

19. Flexibility as to the precise nature of the transfer is necessary and appropriate given the different nature of such sources held by each municipality, the need to incorporate and respect any restrictions contained in existing contractual obligations, and the benefits to all parties in retaining flexibility as the power supply market evolves. Exh. VPPSA 3 at Q4; exh. Municipal Petitioner B.

20. The power pricing design in the ARC contains three components: a Demand Rate; an Energy Charge Rate; and an Equalization Recovery Charge. The revenues generated from these three components will generate the ARC revenue requirement.⁶ Underhill pf. at 4; Foley pf. at 3.

21. The interaction of the three components of the power pricing is set forth in the ARC at paragraph 8 which governs what each Municipality will pay each month to VPPSA for ARC services. Exh. VPPSA 1 at par 8; Underhill 8/21/00 pf. at 5-6; exh. VPPSA 5.

22. The petitioners and the DPS do not agree on whether approval and implementation of the ARC is consistent with principles of least-cost integrated planning, which entail, among other things, an evaluation of appropriate alternatives in meeting Vermont's energy service needs. 30 V.S.A. § 202a.

23. The vesting of the power supply function in VPPSA will streamline the decision-making process, thereby enabling all participants in the ARC to gain the benefits of prompt and thorough evaluation of market opportunities which may require rapid decision-making. Municipal pf. at 2; Evans-Mongeon pf. at 3.

24. The ARC contains customary provisions for monthly billing and timely resolution of any billing disputes which may occur between the parties to the ARC, and it defines events of default and sets forth a force majeure provision. Exh. VPPSA 1 at pars. 9, 11.

25. The most significant benefits associated with the ARC are non-economic. The analysis prepared by Mr. Underhill shows first-year estimated power cost savings of about \$35,000.00. Underhill 8/21/00 pf. at 7; exh. VPPSA 7.

6. The petitioners and the DPS disagree on the appropriate method for calculating the Energy Charge.

26. The non-economic benefits of the ARC arrangement are more significant. Such benefits include relieving the individual systems of the complex and increasingly risky business of power supply, putting VPPSA's experience in this realm to the most efficient use, and freeing Municipal managers and employees to devote more time to transmission and distribution and other issues of concern to system ratepayers. Municipal pf. at 2-4.

27. Nothing in the ARC changes the Board's ratemaking authority over the Municipalities or the regulatory oversight responsibilities of the Board or DPS relative to either the Municipalities or VPPSA, including rights of investigation pertaining to the ARC. 30 V.S.A. §§ 4002(6), 4002a, 5012(15); exh. VPPSA 1 at par. 26.

28. The usefulness of the ARC is not contingent upon any particular outcome of legal and political discussions regarding retail choice, as the ARC simply delegates the power supply function -- whatever it may or may not entail -- from the Municipalities to VPPSA. Evans-Mongeon 8/21/00 pf. at 5.

29. The structure of the ARC and its power pricing mechanisms is such that, should other VPPSA members elect to join the ARC in the future, they can do so without disrupting the arrangement or creating cross subsidization. Underhill 8/21/00 pf. at 11.

30. The parties agree that it is appropriate that VPPSA and the participating systems develop certain protocols as a separate document from the ARC. The petitioners will develop suitable protocols setting forth the procedures for VPPSA to notify participants of its actions and the method and timing of a participant's notification to VPPSA of its desire to restrict VPPSA's actions on the participant's behalf. Those protocols will be filed with the Board and the DPS as a compliance filing in this docket not later than 30 days after the issuance of a final order in this docket. Tr. 5/1/01 at 58-60 (Morley and LaGue); Foley pf. at 3.

TERMINATION OF THE ARC

31. The ARC termination terms allow a participant to terminate only on a binding vote of the voters of the public power system's voters. Exh. VPPSA 1 at par 21.

ENERGY CHARGE RATE

32. The Energy Charge Rate in the proposed ARC is equal to the average of the ISO-New England's hourly energy clearing prices applicable to the month, times the number of hours in the month. Exh. VPPSA 1 (ARC) at par. 8.1.b.

33. The Energy Charge Rate as proposed by VPPSA may allow for the shifting of costs between participants. Foley pf. at 3.

34. It is more appropriate to use the actual hourly ISO price times the participant's corresponding hourly load to determine the Energy Charge Rate. *Id.*

35. The detail in the DPS's method is essential to providing an economically accurate signal to the ARC participants. Tr. 5/1/01 at 66 (Foley).

36. It is not appropriate to simplify a pricing mechanism beyond a point where it ceases to signal to purchasers an essential element of cost causation. *Id.* at 66-67.

37. It is necessary for the municipals to get an accurate pricing signal so they can relay it to their customers. With accurate information, the municipal participants would have the opportunity to set up pricing signals for their large customers or for any of their customers. *Id.* at 67.

38. With accurate pricing signals, the municipal participants can make a determination on how to operate their system so they go forward and minimize not only their own costs but the costs to the rest of the participants. With the average pricing signal that VPPSA is proposing, a utility would not know whether they are an on-peak or off-peak user. *Id.*

39. The bill the utility receives should convey the true economic incentives to manage load and to minimize the cost to all. *Id.* at 68-69.

40. The Energy Charge Rate methodology proposed by the DPS is more accurate than the VPPSA methodology. The method of calculating the Energy Charge Rate is accurate, straight forward, and directly verifiable. *Id.* at 66.

41. VPPSA estimated that an additional one-person day each month would be required to calculate the Energy Charge Rate using the method proposed by the DPS. The cost of that one-person day was unknown. Tr. 5/1/01 at 41-42 (Evans-Mongeon).

42. The additional work required to compute the Energy Charge Rate using the DPS methodology is not strenuous and is not a reason not to use it. Tr. 5/1/01 at 66 (Foley).

43. The proposed ARC, as amended by the above findings 32 through 42⁷, will promote the general good of the ratepayers of the municipal utilities, and is consistent with least-cost integrated planning principles.

7. See Comments on Proposal for Decision, below.

III. DISCUSSION

TERMINATION OF THE ARC

The ARC terms proposed and supported by VPPSA and the Municipals allow a municipal party to terminate the ARC only on a binding vote of that municipality's voters. The DPS has suggested that the ability to terminate the ARC should be extended to include termination on notice given by the manager of the municipality's public power system without requiring a municipal vote.⁸ The DPS has asserted that there is no statutory provision that prohibits termination without a municipal vote, that termination without a municipal vote poses no real jeopardy to access to the bond market by the parties, and that it would be advantageous to give the manager the option to terminate the ARC without a municipal vote if circumstances so dictated.⁹

VPPSA and the Municipals have contended that the current proposed ARC provision requiring a municipal vote for termination should remain unchanged.¹⁰ In support of their position, VPPSA and the Municipals assert that a municipal vote "is compelled by the plain language in the statute, is correct from a public policy standpoint, and is important to allow VPPSA to secure financing."¹¹

I am persuaded that, as a matter of policy, the current ARC provision should remain unchanged.¹² It is clear that both VPPSA and the Municipalities prefer a contract provision that requires voter approval for contract termination.¹³ While there may be a potential advantage to giving the manager(s) the option to terminate the ARC without a municipal vote, there is evidence in the record sufficient to support the petitioners' preference for the municipal vote requirement. At the technical hearing, there was testimony that the managers did not want to be in the position of terminating a contract that the voters had approved. In addition, the Municipalities unanimously

8. Foley pf. at 3.

9. DPS's Brief and Proposed Findings, 5/7/01 at 7.

10. Brief of the Villages, 5/7/01 at. 1-2; Brief and Proposed Findings of VPPSA Re: Energy Charge Issue, 5/7/01 at 1.

11. Brief of the Villages, 5/7/01 at 1-2.

12. Because I have resolved the issue relating to voter approval for contract termination based on policy considerations, I need not address here whether 30 VSA § 4002a(d) mandates voter approval for contract termination.

13. Tr. 5/1/01 at 56-57 (Foley).

testified that termination by the voters could occur within a very short time frame.¹⁴ Finally, VPPSA was advised by its bond counsel that "as a practical matter in connection with the potential issuance of VPPSA's bonds," voter approval should be obtained before any all-requirements contract is terminated.¹⁵

Therefore, I recommend that the ARC contain the proposed provision that requires a municipal party to obtain voter approval as a condition of ARC termination by that municipality.

AMENDMENT OF THE ARC

The proposed ARC is silent with respect to the necessity for regulatory and/or voter approval in connection with amendments to the contract. At the technical hearing, the parties represented their understanding concerning the need for such future approval(s): substantial or material change to the contract would trigger the necessity for Board approval, and possibly voter approval. Minor changes, on the other hand, could be made without any such further approval(s). There was no understanding, however, about the definitions of the terms "material," "substantial" and "minor." Rather, it was suggested that determinations about the need for approval(s) of ARC amendments should be made on a case-by-case basis at the time an amendment is proposed.¹⁶

I agree that any proposed amendment to the ARC should be reviewed in order to determine whether regulatory and/or voter approval is prerequisite to adoption of such amendment. Therefore, I recommend that the Board institute a set procedure for ensuring that such review occurs as needed. Specifically, I suggest that VPPSA and any municipality that is a party¹⁷ to the ARC be required to file any proposed ARC amendment with the Board and the DPS, and that the Board respond to that filing within 60¹⁸ days. The Board response may resolve substantively the question concerning a need for further approval(s), or the Board response may call for further investigations¹⁹ or additional proceedings to further consider that question.

14. *Id.*

15. VPPSA Exh. 8, at 2 (Foley).

16. Tr. 5/1/01, pp. 102-106.

17. See Comments on Proposal for Decision, below.

18. See Comments on Proposal for Decision, below.

19. See Comments on Proposal for Decision, below.

ENERGY CHARGE RATE

The petitioners' proposed methodology for the Energy Charge Rate does not send the correct price signal to the municipal participants and their customers, and could allow the shifting of costs between participants. Basically, the VPPSA methodology is an average that does not give individualized information to each participant. It is not appropriate to simplify a pricing mechanism beyond a point where it ceases to signal to purchasers an essential element of cost causation. Sending the correct price signal is important to the decision-making that should be done by the municipal participants in operating their systems so that they minimize not only their costs but costs to the rest of the participants.

The VPPSA proposed methodology for the ARC's Energy Charge Rate also is not consistent with principles of least-cost integrated planning as set forth by the Board in PSB Docket No. 5270, Investigation into Least-Cost Investments, Energy Efficiency, Conservation, and Management of Demand for Energy, Order of 4/16/90. The method for calculating the Energy Charge Rate proposed by the DPS is consistent with least-cost integrated planning, and is accurate, straightforward and verifiable. Finally, there is no evidence indicating that the cost of performing the calculation as per the DPS's methodology is excessive compared to the benefits it will provide and the fact that it sends the proper price signals.

COMPLIANCE FILING

The PAMSA, as agreed to by the parties, leaves two areas of ambiguity that should be addressed prior to submitting the PAMSA to the voters for their approval. First, the contract does not set forth protocols for procedures for VPPSA to notify participants of its actions and for the method and timing whereby a participant would notify VPPSA of its desire to restrict VPPSA's actions on the participant's behalf. The parties have agreed that the petitioners would develop suitable protocols to address these notice issues.²⁰

Second, the petitioning²¹ parties disagree about the meaning of the language in paragraph 11 of the PAMSA relating to what constitutes a "substantial" or "material" breach of the contract. There is question as to whether the enumerated examples of actions that will be deemed to

20. DPS's Brief and Proposed Findings, 5/7/01 at p. 3; see Finding No. 32, above.

21. See Comments on Proposal for Decision, below.

constitute a breach, as set forth in paragraph 11 of the PAMSA, are the exclusive ways in which each of the parties to the ARC²² may deem the contract to have been breached. At the technical hearing, the parties represented that they would discuss how to resolve their different interpretations of the language in the ARC relating to what constitutes a "substantial" and "material" breach by each of the parties to the ARC.²³

Therefore, I recommend that the Board require the parties to make a compliance filing in this docket. Specifically, I suggest that the parties be directed to file a revised PAMSA that contains language that: (1) describes the energy charge in accordance with this Order that the energy charge should be determined by using the actual ISO price times the participants corresponding hourly load²⁴; (2) describes the protocol setting forth the procedures for VPPSA to notify participants of its actions and the method and timing of a participant's desire to restrict VPPSA's actions on the participant's behalf; and (3) clarifies what constitutes a "substantial" and "material" breach by each of the parties to the ARC. This revised PAMSA should be the document presented to the Municipalities' voters for their approval as required by 30 V.S.A. § 4002a(d).

COMMENTS ON PROPOSAL FOR DECISION

I have reviewed the comments that were filed on this Proposal for Decision, and have adopted the technical and clarifying comments of the Department of Public Service set forth in Sarah Hofmann's letter of May 21, 2001. Each of these changes have been referenced to this paragraph by footnote.

22. See Comments on Proposal for Decision, below.

23. Tr. 5/1/01, pp. 98-99.

24. See Comments on Proposal for Decision, below.

IV. CONCLUSION

It is my opinion that the proposed ARC, as amended by the above findings 32 through 42, will promote the general good of the ratepayers of the municipal utilities, and is consistent with least-cost integrated planning principles. I recommend that the Board approve the All Requirements Contract in accordance with this Proposal for Decision.

This Proposal for Decision has been served on all parties to this proceeding in accordance with 3 V.S.A. § 811.

Dated at Montpelier, Vermont, this 31st day of May, 2001.

s/Ennis John Gidney

Ennis John Gidney
Hearing Officer

V. BOARD DISCUSSION

VPPSA and the Municipalities have requested our approval of an all requirements contract (the PAMSA). This proposed contract calls for the Municipalities to make payments to VPPSA that involve an Energy Charge Rate, the pricing of which is based upon aggregation at average cost of the individual municipal utilities' loads and sources. The Hearing Officer has concluded that this pricing methodology is not consistent with principles of least-cost integrated planning as set forth in PSB Docket No. 5270. He has recommended that the Energy Charge Rate for each individual utility instead be determined by using the actual hourly ISO price multiplied by that individual municipal utility's corresponding hourly load (the "real time" price). The Hearing Officer's reasoning is that "[i]t is not appropriate to simplify a pricing mechanism beyond a point where it ceases to signal to purchasers an essential element of cost causation [as VPPSA's proposed methodology does],"²⁵ and that the detail in the "real time" price methodology "is essential to providing an economically accurate signal to the [all requirements contract] participants."²⁶

We agree with the conclusion and recommendation of the Hearing Officer concerning the proper methodology for calculating the Energy Charge Rate. Our approval of an all requirements contract must rest upon "findings that the proposed arrangement will promote the general good of the ratepayers of the utility or utilities, and is consistent with least-cost integrated planning principles"(emphasis added).²⁷ As explained in the proposal for decision, above, it is necessary for the municipal utilities to get an accurate pricing signal so they can relay it to their customers, and so that they can determine how to operate their system in such a way as to minimize not only their own costs but also the costs to the rest of the PAMSA participants. With the average pricing signal that VPPSA is proposing, a utility would not know whether it is an on-peak or off-peak user. This is because of the fact that New England power markets are priced for all participants

25. Finding #36 at page 8, above.

26. Finding #35 at page 8, above.

27. 30 VSA 4002a(b)(1).

(including VPPSA's members), based on the *coincident* peak of the total system, not on the divergent peaks of each individual system.

In addition, the allocation proposed by VPPSA creates an incentive that could shift the historic load peak of the individual municipal utilities to the coincident load peak of the total New England Power Pool ("NEPOOL") system. If the municipal utility is not seeing the "real time" price signal, and if its peak is contributing to the peak in the wholesale market, then the wholesale spot market price of energy may rise as a result of the municipal utility's contribution to the regional peak. If this happens, then the extra costs to NEPOOL and the municipal utilities would far exceed VPPSA's estimate of eight hours of labor costs in connection with calculating the Energy Charge Rate on a "real time" basis.

One other point also requires emphasis, particularly in light of the text of the Hearing Officer's findings #26 and #14, above. Finding # 26 states that:

"The non-economic benefits of the ARC ... include relieving the individual systems of the complex and increasingly risky business of power supply, putting VPPSA's experience in this realm to the most efficient use, and freeing Municipal managers and employees to devote more time to transmission and distribution and other issues of concern to system ratepayers."

Finding # 14 states that:

"Under the ARC, the VPPSA Board of Directors will hold responsibility for power supply decisions. A representative of each Municipality sits on the VPPSA Board, and has full and fair authority to influence and participate in decisions of the VPPSA Board. ... However, an individual Municipality may direct the purchase of a new supply source for its own use, that would not otherwise have been obtained by VPPSA for the ARC participants, and the Municipal will be assigned all costs and benefits of such a new source."

We hereby state that the proposed assumption of responsibility by VPPSA for managing the Municipalities' power supply does *not* relieve the Municipalities of this (or any other) responsibility. The PAMSA authorizes VPPSA to act on behalf of the Municipalities, and affords each municipal utility the opportunity to reject actions VPPSA would otherwise take on behalf of that utility. This explicit contractual grant of authority leaves the utility with responsibility for the

actions that it so authorizes.²⁸ Moreover, as we discussed in detail in PSB Docket No. 5132, Vermont law recognizes that

"The real test ... is whether the act is done by one for another, however trivial, with the knowledge of the person sought to be charged as master, with his assent, expressed or implied, even though there was no request on his part to the other to do the act in question. Brown v. Galipeau, 116 Vt. 290, 293 (1950); Harte v. Peerless Ins. Co., 123 Vt. 120, 125 (1962); Young v. Lamson, 121 Vt. 474, 477 (1960)."²⁹

Thus, it is clear that the Municipalities will continue to bear the ultimate responsibility for decisions made by VPPSA on its behalf under the PAMSA. Additionally, it is clear that the Municipalities will continue to be required to fulfill the least-cost integrated resource plan obligations imposed by 30 VSA § 218c.

Finally, we agree with the Hearing Officer's recommendation that the protocols for the contractual parties giving each other notice, and language clarifying what constitutes a "substantial" or "material" breach of the contract, should be included in the PAMSA itself and, consequently, be presented to the voters in that context.

28. PSB Docket No. 5132, Order of 5/15/87, p. 92.

29. Docket No. 5132, Order of 5/15/87, p. 93.

VI. ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Public Service Board of the State of Vermont that:

1. The findings, conclusions and recommendation of the Hearing Officer are adopted.
2. Entry into, and exit from, the All Requirements Contract ("ARC") by each municipality is subject to the voter approval requirements of 30 V.S.A. § 4002a(b)(2).
3. The Energy Charge Rate shall be computed by multiplying the actual hourly ISO-New England price by the public power system's corresponding hourly load.
4. Vermont Public Power Supply Authority ("VPPSA") and the petitioning municipalities shall file, as a compliance filing, a revised Power Supply Assumption, Mitigation and Supply Agreement ("PAMSA") that contains language that: (1) describes the energy charge in accordance with this Order that the energy charge should be determined by using the actual ISO price times the participants corresponding hourly load; (2) describes the protocol setting forth the procedures for the VPPSA to notify participants of its actions and the method and timing of a participant's desire to restrict the VPPSA's actions on the participant's behalf; and (3) clarifies what constitutes a "substantial" and "material" breach by each of the parties to the ARC.
5. VPPSA and the petitioning municipalities are hereby authorized, upon Board approval of the above-described compliance filing, to enter into an all requirements contract, the terms of which are consistent with this Order, to effectuate the transfer of sources to VPPSA in substantially the form and manner indicated by the record in this docket, and to take all other steps reasonably necessary to implement and operate under the terms of the ARC.
6. The following procedure shall be followed in connection with future proposed amendments to the ARC: The parties to the ARC shall file any proposed ARC amendment with the Board and with the Department of Public Service. The proposed amendment shall be deemed approved unless the Board indicates otherwise within 60 days; such an indication either may

resolve substantively the question concerning a need for further approval(s), or may call for additional proceedings to further consider that question.

7. The All Requirements Contract, as amended consistent with this Order, will promote the general good of the ratepayers of the petitioning municipalities and is consistent with least-cost planning principles.

Dated at Montpelier, Vermont, this 1st day of June, 2001.

<u>s/Michael H. Dworkin</u>)	
)	PUBLIC SERVICE
)	
<u>s/David C. Coen</u>)	BOARD
)	
)	OF VERMONT
<u>s/John D. Burke</u>)	

OFFICE OF THE CLERK

FILED: June 1, 2001

ATTEST: s/Judith C. Whitney
Deputy Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or mail) of any technical errors, in order that any necessary corrections may be made. (E-mail address: Clerk@psb.state.vt.us)

Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.